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The Honorable Frederick P. Corbit
Chapter: 7

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

GIGA WATT, INC., a Washington
corporation,

Debtor.

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

PERKINS COIE, LLP, a Washington
limited liability partnership; LOWELL
NESS, individual and California resident;
GIGA WATT PTE., LTD. a Singapore
corporation; and ANDREY KUZENNY, a
citizen of the Russian Federation;

Defendants

and

THE GIGA WATT PROJECT, a
partnership,

Nominal defendant.

No. 18-03197-FPC11

The Honorable Frederick P. Corbit

CHAPTER 7

Adv. Case No. 20-80031

**PERKINS' AND TRUSTEE'S
JOINT MOTION FOR AN
ORDER TO SHOW CAUSE RE
SUBPOENA TO INTUIT INC.**

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Intuit Inc. (“Intuit”) is the parent company and creator of QuickBooks, a service
3 and tool businesses can use to track their finances and accounting. Giga Watt, Inc.
4 may have used QuickBooks to do just that. Recognizing the potential importance of
5 the QuickBooks data for its ability to explain the financial history of Giga Watt, Inc.,
6 both Perkins Coie LLP and Lowell Ness (hereinafter collectively referred to as
7 “Perkins”) and the Trustee for the debtor Giga Watt, Inc., have made a concerted
8 effort to obtain records maintained by Intuit regarding the Giga Watt Quickbooks
9 data. After months of requests to Intuit, including two subpoenas, one turnover letter,
10 and numerous informal requests for compliance, no documents have been produced.
11 Perkins and the Trustee jointly bring this Motion to request this Court to issue an
12 order requiring Intuit to appear before this Court and show cause why it should not be
13 held in contempt for failure to produce the requested records.
14

15 **II. BACKGROUND AND RELEVANT FACTS**

16 In the present adversary action, Perkins is alleged to be liable to the debtor,
17 Giga Watt, Inc., for improperly releasing funds held in escrow prior to the
18 construction of additional capacity to host purchasers of WTT tokens. From
19 documents reviewed in discovery, it is apparent that Giga Watt, Inc. used QuickBooks
20 to record and track a portion or all of its accounting. There is evidence, for example,
21 suggesting that Giga Watt, Inc. routinely entered all financial transactions reflected in
22 its bank and payroll records into the Quickbooks data base maintained by Intuit during
23 certain periods of time. The parties thus believe that there would be considerable
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1 evidence in the QuickBooks data, held by Intuit, regarding the financial affairs of the
2 debtor.
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4 Despite having already combed through thousands of documents, neither the
5 Trustee for Giga Watt, Inc. nor Perkins has been able to locate a copy of Giga Watt,
6 Inc.'s QuickBooks records in the debtor's possession. Access to Giga Watt, Inc.'s
7 QuickBooks records held by Intuit would thus give the parties considerable additional
8 information regarding accounting practices and financial affairs of the debtor. For
9 example, the information in the Quickbooks records will hopefully explain when Giga
10 Watt, Inc. received money, how it was characterized, how the money was used, and
11 whether the funds released from escrow to Giga Watt Singapore were transferred to
12 Giga Watt, Inc.
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14 Intuit was first served with a subpoena to produce documents by Perkins on
15 November 19, 2021, at the address for their registered agent in Washington state.
16 Decl. Pradhan ¶ 3. In response, through their counsel Davis Wright Tremaine LLP
17 ("DWT"), Intuit issued objections to the subpoena. *Id.* On January 3, 2022, counsel
18 for Perkins, Joan Pradhan, communicated with Teri Novak of DWT to arrange a time
19 to discuss the issued objections. *Id.* ¶ 4. The next day, on January 4, 2022, Ms.
20 Pradhan participated in a phone call with Ms. Novak in which Ms. Pradhan explained
21 why the documents were needed and offered to limit the requested production to the
22 QuickBooks records of Giga Watt, Inc. *Id.* ¶ 5. Teri Novak said that Intuit would
23 produce the QuickBooks records responsive to the subpoena, and that such production
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1 could take up to a month. *Id.* After waiting more than a month, no documents were
2 produced by Intuit in response to Perkins' subpoena. *Id.* ¶ 6. On February 23, 2022,
3 Ms. Pradhan contacted Teri Novak again, requesting an update on when the
4 documents from Intuit would be produced. *Id.* No responsive communication was
5 received from Ms. Novak or anyone else at DWT, and no documents from Intuit were
6 ever produced in response to Perkins' subpoena. *Id.* ¶¶ 6-7.

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8 On March 9, 2022, Pamela Egan, counsel for the Trustee in this matter, issued a
9 turnover letter to Intuit demanding that it provide, to the Trustee, full access to the
10 Quickbooks records related to the financial affairs of Giga Watt, Inc. Decl. Egan ¶ 3.
11 On April 6, 2022, Christopher Bunger, a paralegal of DWT, contacted Ms. Egan,
12 indicating he would be the primary point of contact for the matter. *Id.* ¶ 4. That same
13 day, Ms. Egan and Mr. Bunger participated in a telephone call to meet and confer
14 regarding the turnover letter. *Id.* During the meet and confer, Mr. Bunger said Intuit
15 would comply with the turnover letter. *Id.* Mr. Bunger requested a subpoena from
16 Ms. Egan, which was served the next day on April 7, 2022. *Id.* ¶¶ 4-5. The subpoena
17 commanded production by April 18, 2022. *Id.* ¶ 5.

18
19 On April 29, 2022, Ms. Egan informed Mr. Bunger that a reasonable date
20 certain for production of Intuit's documents must be given by May 4, 2022, or an
21 Order to Show Cause would be requested from the Court. *Id.* ¶ 6. More recently, Ms.
22 Egan has received additional assurances that Intuit had located, and would produce,
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1 QuickBooks data related to the debtor. Nevertheless, as of the date of this motion, no
2 actual production has occurred.
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4 **III. LEGAL AUTHORITY AND ARGUMENT**

5 Under Federal Rule of Civil Procedure 45(g), a court may hold the recipient of
6 a subpoena in contempt if they fail to obey the subpoena “without adequate excuse.”
7 Federal Rule of Bankruptcy Procedure 9016 makes FRCP 45 applicable to all
8 bankruptcy cases. “The procedure for civil contempt is to set an order to show cause
9 hearing and to provide the contemnor an opportunity to respond and/or comply with
10 the order.” *Mission Capital Works, Inc. v. SC Restaurants, Inc.*, No. C07-1807-JLR,
11 2008 WL 5100313, at *4 (W.D. Wash. Dec. 3, 2008). Due process considerations
12 will be met when the contemnor is provided with actual notice and an opportunity to
13 be heard why sanctions and contempt should not issue. *Id.*
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17 Despite two subpoenas issued, one by Perkins and the other by the Trustee, and a
18 turnover letter from the Trustee, Intuit has failed to produce anything. Intuit has kept
19 both parties waiting patiently for months, and has repeatedly agreed to produce
20 responsive, but never ultimately produces anything. Intuit has either chosen to ignore
21 its obligation or does not understand the expediency at which their production must be
22 done. Either way, it is time for the court to use its discretion and set an Order to Show
23 Cause Hearing for Intuit to explain why it has not produced the records requested of it.
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1 Unless Intuit can justify their repeated failures to comply with the two subpoenas and
2 turnover letter, Intuit should be issued sanctions and held in contempt by this Court.
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4 **IV. CONCLUSION**

5 Perkins and the Trustee jointly request this Court issue an Order to Show Cause
6 Hearing to Intuit requiring Intuit to appear in 14 days to show cause why it should not
7 be held in contempt for failure to produce responsive documents and why Intuit
8 should not be commanded to produce responsive documents by a date certain to be set
9 by the Court.
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1 DATED this 25th day of May, 2022.

2 Presented By:

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